

UNITED STATES OF DISTRICT COURT
OF THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FELIPE JIMENEZ

§

Plaintiff,

§

§

VS.

§

CIVIL ACTION NO.

§

JESSE MEEKS AND

§

CACTUS TANKS, LLC

§

Defendants

§

§

§

NOTICE OF REMOVAL

Defendant Cactus Tanks, LLC (“Defendant”) files this Notice of Removal of the above-styled action pursuant to 28 U.S.C. §§ 1446(a) and would respectfully represent and show unto this Court the following:

A. Introduction

1. Pursuant to Local Rules 3.1 and 81.1, Defendants file their Civil Cover Sheet (Exhibit “A”).
2. On or about December 8, 2021 Plaintiff Felipe Jimenez (“Plaintiff”) initiated a lawsuit in state court against Defendants in the 14th Judicial District Court of Dallas County, Texas styled *Felipe Jimenez v. Jesse Meeks and Cactus Tanks, LLC*, pending as Cause No. DC-21-17580 (“the state court action”). In the state court action, Plaintiff seeks actual damages for claims of

negligence and vicarious liability. Further, Plaintiff seeks attorney's fees, actual damages, and statutory interest. *See Plaintiff's Original Petition*, attached hereto as Exhibit "B".

3. The attorneys involved in the action being removed are listed as follows:

Party and Party Type

Attorney(s)

Felipe Jimenez - Plaintiff

Griffin Scheumack
Texas Bar No. 24097168
Ben Abbott & Associates, PLLC
1934 Pendleton Dr.
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Cactus Tanks, LLC - Defendant

Randall G. Walters
Texas Bar No. 20819480
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Meadow Park Tower
10440 N. Central Expy, Suite 1500
Dallas, TX 75231
Telephone (214) 749-4805
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Jesse Meeks – Defendant

Randall G. Walters
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4. The name and address of the court from which the case is being removed is as follows:

The Honorable Eric Moye
14th District Court
600 Commerce Street
5th Floor
Dallas, Texas 75202
214.653.6000

B. Notice of Removal Timely

5. Service has not been effectuated upon Defendant Cactus at this time; however, on January 24, 2022, Defendant authorized counsel to answer in lieu of service. *See* Exhibit “C”. Pursuant to 28 U.S.C. Section 1446(b), this Notice of Removal is filed within thirty (30) days Defendant’s initial appearance, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based. Consequently, this Notice of Removal is timely.

C. Basis for Removal of Claims

6. Pursuant to the state court action, Plaintiff is a citizen of the State of Texas. Defendant is now, and was at all times relevant hereto, a citizen of the State of Oklahoma, incorporated in the State of Oklahoma, and having its principal place of business in the State of Oklahoma. When a district court’s removal jurisdiction is based on diversity, removability is limited by the citizenship of its co-defendants. *Delphis, L.P. v. NFLP Holdings, Ltd.*, 3:10-CV-01583-F, 2010 WL 11561744, at *2 (N.D. Tex. Nov. 3, 2010). Co-defendant Meeks is also a resident of the State of Oklahoma.

7. Removal of Plaintiff's claims is proper under 28 U.S.C. § 1332(a) because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest, costs, and attorney's fees.

8. Plaintiff's Original Petition alleges actual damages and seeks attorney's fees and statutory interest. *See* Exhibit "B."

9. In determining the amount in controversy, the court may consider "policy limits ... penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at *2-*3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff's case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int'l Co., et al.*, 75 F.Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exchange*, 844 F.Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought, and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

D. Filing of Notice with State Court

10. Promptly after filing this Notice of Removal, Cactus will give written notice of the removal to Plaintiff through its attorney of record and to the clerk of the state court action.

PRAYER

11. WHEREFORE, PREMISES CONSIDERED, Defendant Cactus Tanks, LLC requests that this Court proceed with the handling of this cause of action as if it had been originally filed herein, that this Court make such orders, if any, and take such action, if any, as may be necessary in connection with the removal of the state court action to this Court, and that it have such other and further relief to which it may show itself entitled.

Respectfully submitted,

WALTERS, BALIDO & CRAIN, L.L.P.

BY: /s/ Randall G. Walters
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on the 23rd day of February, 2022, a true and correct copy of the above and foregoing was forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Randall G. Walters
RANDALL G. WALTERS